

TEXT OF REGULATIONS

HOME INVESTMENT PARTNERSHIPS (HOME California Code of Regulations Title 25, Division 1, Chapter 7 Proposed Amendments to Subchapter 17

Amend Section 8204 as follows:

8204. Eligible Applicant.

- (a) In order to be eligible to apply for HOME funds, the applicant shall be a city or county, or a nonprofit corporation that has been certified as a CHDO by the Department pursuant to section 8204.1.
 - (1) Cities and counties shall comply with the following:
 - (A) A city may only apply for funding for activities within its incorporated boundaries;
 - (B) A county may only apply for funding for activities within its unincorporated areas;
 - (C) A city or county applicant shall not have been designated as a participating jurisdiction, or included as part of an urban county, as defined in 24 CFR section 570.3(ee), or included as part of a consortium, as defined in 24 CFR section 92.101, for HOME funding for the federal fiscal year for which the NOFA is issued, and
 - (D) A city or county applicant must demonstrate to the Department's satisfaction that it has:
 - (i) staff available or has committed to hiring staff able to operate a local HOME program and oversee the work of an administrative subcontractor, if any, and
 - (ii) resolved any audit finding(s), for prior department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,
 - (iii) provided a self certification that it is not debarred or suspended from participation in federal or state housing or community development projects or program, and
 - (iv) provided a self certification that it is in compliance with the

submittal requirements of OMB A-133, Single Audit Report.

- (2) A CHDO applicant shall comply with the following:
- (A) have received the Department's certification to serve the jurisdiction in which the project is located;
 - (B) be eligible to apply for activities located in cities and counties which have not been designated as participating jurisdictions by HUD, or included as part of an urban county, as defined in 24 CFR 570.3(ee), or included as part of a consortium, as defined in 24 CFR 92.101, for HOME funding from the federal fiscal year for which the NOFA was issued; and
 - (C) The CHDO must demonstrate that it has:
 - (i) resolved any audit findings for prior Department or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,
 - (ii) provided a self certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and
 - (ii) provided a self certification that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report; and
 - (D) provide evidence that the CHDO fulfills at least one of the following roles:
 - (i) sole project developer;
 - (ii) sole owner; or
 - (iii) sole general partner.

(b) An applicant with one or more current State HOME contracts for which the expenditure deadline established in the contract(s) has not yet passed shall be ineligible to apply for a program activity unless the applicant has expended at least fifty percent (50%) of the aggregate total of program funds originally awarded.

NOTE: Authority cited: sections 50406 and 50896.3(b), Health and Safety Code
Reference: 24 CFR sections 92.201(b)(3)(i), 92.300(b) and 92.504(a); and sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8210 as follows:

§ 8210. Application Process.

- (a) Within a funding cycle, the Department shall issue one or more NOFAs.
- (b) Eligible applicants, defined as those that comply with the provisions in Section 8204, may submit only one application in response to a NOFA.
- (c) Applications from CHDOs shall propose only activities that are eligible to qualify as CHDO set-aside activities pursuant to 24 CFR Section 92.300(a).
- (d) The NOFA shall specify, among other things, the maximum amount of funds available to a State Recipient or CHDO under the NOFA, the time frame for submittal of applications, the application requirement pursuant to Section 8211, the allocation of rating points pursuant to Section 8212, the matching contribution requirements pursuant to Section 8206, the value of voluntary labor as determined by HUD pursuant to 24 CFR Section 92.220(a)(8), any prohibitions on uses of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.
- (e) ~~Within 80 calendar days after the final filing date for applications as set forth in the NOFA, the Department shall provide successful applicants with an award letter. The Department shall only consider complete applications that are complete, as defined by Section 8211(b), and contain all the information required by Section 8211(c). Failure to comply with this time frame shall not invalidate any conditional reservations made.~~
- (f) If funds are disencumbered pursuant to Section 8218, made available due to an unexecuted standard agreement or made available by HUD pursuant to 24 CFR Section 92.451, the Department may make such funds available to (1) the next highest-ranked unfunded or partially-funded application from the most recent award of funds if the applicant can demonstrate that a proposed activity can be successfully implemented and executed, or (2) through the next published NOFA pursuant to subsection (a).
- (g) In order to comply with any set-aside established by HUD or the Department, or special allocation made by HUD, the Department may do one or more of the following:
 - (1) issue a special NOFA;
 - (2) specify in each NOFA the reservation of a portion of the funds; and
 - (3) specify in each NOFA any waivers to requirements granted by HUD in connection with the funds.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 570.3(ee) and 92.451; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8211 as follows:

§ 8211. Application Requirements/Form.

- (a) Application shall be made on a form made available by the Department that requests the

information required by these regulations.

- (b) An application shall be deemed complete when the Department is able to determine from the information provided whether the application is eligible for rating pursuant to the requirements of Section 8212 (a).
- (c) All applications shall be required to contain the following:
 - (1) identification of the applicant;
 - (2) information on the proposed activity(ies);
 - (3) information adequate to determine whether the applicant is eligible, in accordance with Sections 8204 and 8204.1;
 - (4) information adequate to determine whether the activity is eligible, in accordance with Sections 8205 and 8210(c);
 - (5) information indicating whether the applicant or any member of its program team or project team has any unresolved audit findings or has been suspended or debarred from participation in any federal or State housing or community development program;
 - (6) information on any pending litigation affecting the applicant's ability to carry out the activity;
 - (7) identification of any administrative subcontractor;
 - (8) a certification that the applicant will comply with State and federal requirements;
 - (9) a resolution by the governing board of the applicant authorizing the application and the execution of all required documents;
 - (10) information adequate to determine the experience of the applicant with other federal, State or local housing or community development programs;
 - (11) identification of all members of the program team or project team;
 - (12) information on sources and amounts of matching contributions, in accordance with Section 8206, and sources and amounts of leverage, as defined in Section 8201.
- (d) In addition to the information required by subsection (c), applications proposing programs shall be required to contain the following:
 - (1) information on which member of the program team is responsible for accomplishing key administrative tasks;
 - (2) information on the projected administrative budget and sources of funds to pay for the costs of administering the program;

- (3) information adequate to determine the experience of the applicant in administering a program to assist the same type of activity proposed in the application;
 - (4) a description of how the applicant proposes to use HOME funds;
 - (5) a copy of the guidelines to be used by the applicant for administering the program in compliance with State and federal requirements;
 - (6) information adequate to determine the feasibility of the program;~~2~~
 - ~~(7) selection of a milestone schedule, pursuant to Section 8217.~~
- (e) In addition to the information required by subsection (c), applications proposing projects shall be required to contain the following:
- (1) a description of the roles, financial structure and all legal relationships of the applicant, developer, owner(s), managing general partner, administrative subcontractor and all other partners in the construction project;
 - (2) information adequate to determine the experience of the applicant, developer, owner and managing general partner in developing the same type of subsidized project as proposed by the application;
 - (3) information adequate to determine the readiness of the project to proceed;
 - (4) information adequate to determine the feasibility of the proposed project, including information adequate to determine the financial feasibility of the project in accordance with Section 8212(d)(3) and the Uniform Multifamily Regulations (commencing with Section 8300); and
 - (5) if applicant is a CHDO, the procedures to ensure the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1).

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.1, 92.201, 92.205, 92.209, 92.214(a), 92.252, 92.254, 92.300(a)(1), and 92.500; Section 65588, Government Code; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8212 as follows:

§ 8212. Application Selection and Evaluation.

- (a) Applications shall not be considered for funding unless the application is received within the time frame specified in the NOFA and demonstrates that all of the following conditions exist:
 - (1) the applicant is eligible pursuant to Section 8204 and 8204.1;

- (2) the applicant proposes at least one ~~and no more than two activities.~~ eligible activity and ~~The~~ the proposed uses for the HOME funds are eligible pursuant to Section 8205 and 8210(c);
 - (3) the application is complete pursuant to Section 8211;
 - (4) the total amount of funds requested for both administration and activity-specific costs does not exceed the funding allocation limit which is stated in the NOFA and any allowed increase to this limit pursuant to Section 8217;
 - (5) if applicant is a CHDO, includes procedures ensuring the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1); and
 - (6) for applications proposing projects involving acquisition of rental housing, acquisition and rehabilitation of rental housing, rehabilitation of rental housing, construction of rental housing or construction of housing for first-time homebuyers, the application demonstrates:
 - (A) that the project is financially feasible;
 - (B) site control pursuant to Section 8303;
 - (C) that there are no pending lawsuits that will prevent implementation of the project, as proposed;
 - (7) for applications proposing rental activities, the application contains documentation demonstrating that the project either complies with or is exempt from Article 34 of the California Constitution.
- (b) Each application considered for funding shall first be rated using the criteria contained in this subsection and the criteria in subsection (c) for program applications and the criteria listed in subsection (d) for project applications. Maximum possible rating points are listed after each criterion. Applications proposing programs and applications proposing projects shall be rated and ranked separately. All applications shall be rated on the following:
- (1) If the applicant is a city or county, the city or county's adopted housing element is in substantive compliance on the date applications are due to the Department as published in the NOFA. Newly formed cities that are not required to have an adopted housing element in compliance with general plan law shall receive full points in this category. If the applicant is a CHDO, the CHDO shall receive full points in this category. (50 points)
 - (2) Whether the application proposes activities within a jurisdiction whose formula allocation is being reallocated by the Department. (50 points)
 - (3) Whether the application proposes activities in a rural area. (50 points)
 - (4) Whether the application addresses one or more state objectives, as identified in the

Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD.
(50 points)

(c) Applications proposing programs shall be evaluated on these additional criteria:

(1) Capability to operate a HOME program, as demonstrated by the following: (up to ~~450~~ 250 points)

(A) Performance of the applicant in meeting federal and State HOME requirements specified in this Section in previous State HOME contracts (up to ~~350~~ 150 points). For this criterion only, all applicants initially will be credited with ~~350~~ 150 points. Applications will then have points deducted for performance problems under previous State HOME contracts.

(i) Applicants who have in the last three contracts, from prior years as defined in the NOFA, ~~missed expenditure milestones pursuant to Section 8217 will lose up to 100 points; committed to the fast-track milestone schedule and not complied with the deadline will lose 200 points; not submitted required quarterly, annual, or project completion reports on time will lose up to 50 points; and~~

(ii) applicants who have not complied with monitoring and contractual requirements identified by the Department in the last 5 years as defined in the NOFA will lose up to 100 points.

(B) Prior experience of the applicant, as measured by implementation of HOME, and/or other local, State or federal affordable housing or community development programs during the most recent seven year period (up to 100 points):

(2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (up to 450 points)

(3) Feasibility of the program being applied for, as demonstrated by the degree to which the applicant's program guidelines reflect federal and State requirements, and the following: (up to 100 points)

(A) for first-time homebuyer programs, the number of units which have sold in the city or county over the preceding 12 month period at a price which is

affordable, given the proposed HOME assistance, to lower income families;

- (B) for rehabilitation of owner-occupied housing and rental housing programs, the number of overcrowded households by tenure and the age of the housing stock by tenure in the city or county, as reflected in U.S. Census data;
- (C) for tenant-based rental assistance programs, the overpayment by lower-income renter households as reflected in U.S. Census data.

~~(4) Readiness to implement the program, as demonstrated by selection of the fast-track milestone schedule. (100 points)~~

~~(5) Applications must receive at least 875 points in subsections (b) and (c) in order to be eligible for funding.~~

(d) Applications proposing projects will be evaluated on these additional criteria:

(1) Capability to develop a HOME-assisted project, as demonstrated by the following: (up to 450 points)

- (A) Performance of the applicant in meeting federal and State HOME requirements specified in this section in previous State HOME contracts; (up to 200 points). For this criterion only, all applicants initially will be credited with 200 points.

Applications will then have points deducted for performance problems under previous State HOME contracts.

- (i) applicants who have in the last 3 contracts, from prior years defined in the NOFA, missed deadlines for projects specified in Section 8217 will lose up to 200 points; or not submitted required quarterly, annual, or project completion reports on time will lose up to 50 points; and
- (ii) applicants who have not complied with monitoring requirements identified by the Department in the last five years will lose up to 100 points.

(B) Prior experience of the applicant, as measured by the implementation of HOME, and/or other local, State or federal affordable housing or community development projects during the most recent seven year period; (up to 50 points)

(C) Prior experience during the most recent five year period of the applicant, developer, owner, and managing general partner in developing the same type of subsidized project, in a manner consistent with the applicable funding source, as is proposed in the application. (up to 200 points)

(2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households and by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock

by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (up to 450 points)

- (3) Feasibility of the-project, as demonstrated by compliance with the Uniform Multifamily Regulations (commencing with Section 8300). Projects will also earn points based on having the greatest percent of assisted units. Point values for each factor will be identified in the NOFA. (up to 200 points)
- (4) Readiness of the project, as demonstrated by the project development plan, status of local governmental approvals, design progress and financing commitments. Point values for each factor will be identified in the NOFA. (up to 300 points)
- (5) Applications must receive at least 930 points in subsections (b) and (d) in order to be eligible for funding.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 91, and 24 CFR Sections 92.1, 92.50, 92.102, 92.204, 92.205, 92.206, 92.218, 92.250, 92.451 and 92.453; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8212.1 as follows:

§ 8212.1. Allocation by Type of Activity and Rural Location.

- (a) HOME funds will be divided into two separate allocations, one for projects and one for programs, with the percentage of each allocation based on the actual application demand expressed as dollar amount requested each year in response to the initial NOFA of a funding cycle. However, in no event shall either allocation decline below 40 percent of the total funding funds available for activities in any year, and if one under the initial NOFA.
- (b) If either minimum allocation is not fully subscribed for applications submitted under the initial NOFA, the remaining funds can may be: (i) transferred to the other allocation; (ii) made available under a subsequent NOFA; or (iii) a combination of both (i) and (ii). Funds made available under a subsequent NOFA may be made available on a first come-first served basis for a maximum of nine months from the application deadline under the initial NOFA.
- (c) In making its determination of how to allocate remaining funds pursuant to subsection (b), the Department shall, at a minimum, consider: (i) the amount of funds remaining; (ii) any remaining demand under a fully subscribed allocation; (iii) the potential future

demand for program funds based on expenditure information on file with the Department; and (iv) the anticipated timing and amount of the initial NOFA for the next funding cycle.

(d) Projects will compete against projects, and programs will compete against programs.

~~(b)~~(e) At least 50 percent of HOME funds awarded will be reserved for applicants qualifying for rural points, as stated in 8212 (b)(3). However, if an insufficient number of applications that qualify for rural points are eligible for funding pursuant to 8212(c)~~(5)~~ and 8212(d)(5), the remaining rural funding reservation will be used to fund any non-rural applications that are eligible for funding.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8213 as follows:

§ 8213. Conditional Reservation of Funds.

- (a) The Department will rate, rank and issue conditional reservations of funds for applications based on its review of all of the eligible activities for which funds are requested in the application. Rating scores for each of the factors set forth in Section 8212(b), (c) and (d) will be totaled by the Department. Those project applications which receive the minimum required number of points, as specified in 8212 ~~(c) and (d)~~, and all eligible program applications will receive conditional reservations in the order in which they are ranked with the higher point score funded first. Those applications which are to be funded wholly from any set-aside, because all proposed activities are eligible to qualify as set-aside activities, shall be funded first based on their score. Once the set-aside has been achieved, all remaining applications will be funded based on their score relative to all other remaining applications.
- (b) In the case of a tied score, the application demonstrating the highest poverty level shall receive the higher ranking.
- (c) In the event there are insufficient funds to fund an applicant's whole program, the applicant may be offered the amount of funds available, provided it is sufficient to complete a portion of the application which, if evaluated separately, would have been awarded funds.
- (d) Applications shall be funded subject to the availability of funds.

NOTE: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

Amend Section 8217 as follows:

§ 8217. Project Deadlines and ~~Expenditure~~ Milestones

- (a) For purposes of this section, the following terms have the following meanings:
- (1) "Contract" means the standard agreement required by section 8214. The contract shall designate each activity listed therein as either a "project" or a "program".
 - (2) "Contractor" means a CHDO or State Recipient that has executed a contract with the Department.
 - (3) ~~"Expended"~~ "Expenditure" means the Department has received a valid disbursement request for the funds.
 - ~~(4) "Fast-track milestone schedule" means an optional accelerated milestone schedule that may be chosen by a HOME applicant pursuant to Section 8212(c)(4). The fast-track milestone schedule requires contractors to expend 50 percent of the activity amount within 12 months of the date of the award letter, and expended 95 percent of the activity amount within 18 months of the date of the award letter.~~
 - (4) "Performance points" means those points made available pursuant to Section 8212(b)(1)(A).
 - (5) "Project" means an activity for which, at the time of application, there is an identified site and an identified borrower. No substitution of the site shall be permitted after the submission of an application to the Department.
 - (6) "Program" means an activity for which, at the time of application, there is no identified site or no identified borrower.

(b) Project Deadlines

- (1) All projects shall meet the following deadlines:
 - (A) the State Recipient or CHDO shall obtain all necessary permanent project financing, including the permanent financing for the required period of affordability within 12 months of the date of the award letter;
 - (B) all projects shall be set up in the federal disbursement and information system no later than 17 months after the date of the award letter;
 - (C) all construction loan closings shall occur no later than 20 months after the date of the award letter, with the exception of self-help projects, for which construction loan closings must occur no later than 23 months after the date of the award letter. Construction loan closing is defined as the recordation of all construction financing loan documents, including, as applicable, the HOME Deed of Trust and HOME Regulatory Agreement;
 - (D) all projects shall be completed within 36 months of the date of the award letter, as evidenced by the filing of a Notice of Completion; and
 - (E) all expenditures shall be made within 40 months of the date of the award letter.

- (2) If a project fails to meet one or more of these timeframes outlined in (1) above, the next application for a project submitted by the contractor in response to a NOFA having an application deadline after the missed project deadline/s shall receive a performance penalty pursuant to section 8212(d)(1)(A).
- (3) If a project fails to meet three (3) of the timeframes outlined in (1) above: the contractor shall be:
 - (A) ineligible to apply for a project in any NOFA having an application deadline following the third missed deadline until the project is completed, occupancy is obtained and all expenditures are made and all necessary HOME funds are drawn; and
 - (B) the next application for a project submitted by the contractor shall receive a performance penalty.

~~(c) Program Milestones~~

- ~~(1) Contractors that did not select the fast-track milestone schedule pursuant to Section 8212(c)(4) shall be subject to the following expenditure provisions calculated from the date the award to the contractor is announced by the Department and based on the activity amount set forth in the contract.~~
 - ~~(A) 20 per cent of the activity amount expended by the end of the 12th month; 50 per cent expended by the end of the 18th month; and 95 per cent expended by the end of the 30th month; (the "final milestone").~~
 - ~~(i) Funds expended for program administration shall not be considered in calculating expenditure milestones.~~
 - ~~(ii) Program income funds expended on the same program activity specified in the Standard Agreement or as otherwise approved in writing by the Department will be used in the calculation of disbursements in determining if the milestones are met except for the final.~~
 - ~~(iii) In the event that unexecuted standard agreements are not mailed to all program contractors within 90 days of the date of the award letter, the Department shall extend the expenditure milestones specified in this paragraph (1) by the total number of days between the 90th day and the date the last contract is mailed.~~
 - ~~(B) If a program fails to meet any two milestones, the next application for a program submitted by the contractor in response to a NOFA having an application deadline following the second milestone shall receive a performance penalty.~~
 - ~~(C) If a program fails to meet all three (3) milestones: the contractor shall be ineligible to apply for a program under the first NOFA having an application deadline following the third missed milestone for a program and the next~~

~~application for a program submitted by the contractor shall receive a performance penalty.~~

~~(D) All unexpended funds remaining after the final milestone shall be disencumbered by the Department.~~

~~(2) Contractors that selected the fast-track milestone schedule pursuant to Section 8212(c)(4) that do not expend at least 95 percent of their activity amount within 18 months of the date of the award letter will be ineligible to apply for HOME funds made available under the first NOFA having an application deadline following the missed milestone, and the next application for a program submitted by the contractor shall be ineligible to choose the fast-track milestone schedule, and shall receive a performance penalty of double the amount of points that they received in the previous application for choosing the fast-track milestone schedule, as defined in Section 8212(c)(4).~~

~~(3) Notwithstanding anything to the contrary in this Section, contracts that were awarded HOME funds from a NOFA issued prior to 2004 shall be subject to the milestones that were in effect when their contracts were entered into. Contracts awarded HOME funds from a NOFA issued prior to 2004 that do not comply with milestone expenditure requirements are subject to the following performance penalties:~~

~~(A) If a program fails to meet two successive milestones, the next application for a program submitted by the contractor in response to a NOFA having an application deadline following the second milestone shall receive a performance penalty.~~

~~(B) If a program fails to meet any three (3) milestones: the contractor shall be ineligible to apply for HOME funds for a program under the first NOFA having an application deadline following the third missed milestone.~~

~~(4) The State may provide an increase to the program funding limit based on an applicant's prior HOME performance and criteria specified in the NOFA.~~

(c) An exception to the program and project requirements of this section may be requested and provided at the Department's sole discretion when it is determined that violation was clearly outside of the control of the Contractor. This provision does not apply to Subsection 8217(b)(3)(A).

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code. Reference: 24 CFR Sections 92.454(a)(2) and 92.500(d); and Sections 50896 and 50896.1, Health and Safety Code.